

a

ORIENTAL BANK BHD.

v.

C.S.J. PENGANGKUTAN SDN. BHD.

HIGH COURT MALAYA, PENANG

MOHAMED DZAIDDIN J

b

[COMPANIES WINDING-UP NO. 42-30-87]

29 AUGUST 1989

COMPANY LAW: *Winding-up - Insolvent - Unable to pay debts - Just and equitable to wind up the company - Section 218(1)(e) Companies Act 1965.*

c

This was a petition to wind up the respondent company on the ground that it was insolvent and unable to pay its debts and that in the circumstances of the case it was just and equitable that the company be wound up.

d

The petition for winding up was filed in August 1987 but an adjournment was requested by the respondent company on the ground that the matter would be settled out of Court. Subsequently however, the respondent filed an amended summons-in-chambers seeking an order that all further proceedings in respect of the petition be stayed pending the disposal of the respondents application to set aside the default judgment in civil suit no. 905 of 1985. The respondents application was dismissed but the Judge varied the rate of interest. When this petition came up for final disposal, the respondent company opposed this petition on the ground that the default judgment had been varied in terms of the interest rate and therefore the prices amount had not been quantified. The respondent company still owed the petitioner debt amounting to over RM2 million as principal sum plus interest.

*e***Held:**

The respondent company was insolvent and unable to pay its debts under s. 218(1)(e) of the Companies Act 1965 and therefore it was just and equitable that it be wound up.

[Winding-up order granted.]

*f***Case referred to:**

Re: Tweeds Garages Ltd. [1962] Ch 406

Legislation referred to:

Companies Act 1965, s. 218(1)(e)

For the petitioner - Shamsul-Bahrin bin Ibrahim; M/s. Skrine & Co.

g

For the respondent - Mahinder Singh Dulku (with Foong Kai Chong); M/s. Mahinder Singh Dulku & Co.

JUDGMENT**Mohamed Dzaiddin J:***h*

This was a petition for winding-up the respondent company on the ground that it was insolvent and unable to pay its debt and that in the circumstances of the case it was just and equitable that the company be wound up.

It should be noted that although the petition for winding-up was filed in August 1987 the final order was eventually made on 26 June 1989, some 20 months after the petition was filed. It must be appreciated that this petition had a chequered history, which could be seen

i

quite clearly from the notes of proceedings. It must however be noted that one of the causes for the delay was the adjournments requested on behalf of the respondent company on the ground that the matter would be settled out of Court and such consideration was given by me until the last straw taken by the respondent when they filed an amended summons in chambers (encl. 33) seeking an order that all further proceedings in respect of the petition be stayed pending the disposal of the respondent's application to set aside the default judgment (upon which this petition is founded) in civil suit no. 905 of 1985. At the hearing of the said application on 8 August 1988, I granted the application.

In the meantime, on 4 November 1988 Edger Joseph Jr. J in civil no. 905 of 1985 dismissed the respondent's application to set aside the said default judgment, but varied the rate of interest on the judgment sum to 8% per annum from the date of judgment to the date of realization.

Finally, when this petition came up for final disposal on 26 June 1989, Encik Foong, for the respondent company opposed this petition on the ground that the default judgment of the Court dated 19 December 1985, had been varied in term of the interest rate and therefore the precise amount had not been quantified. On this issue, I felt there was no merit because the fact remains that the respondent company owed the petitioner debt amounting to over RM2 million as principal sum and the fact that the interest amount would now be reduced and which said amount had not been quantified did not bar the Court from making a winding-up order. A dispute as to the precise sum owed is not a sufficient answer to the petition. (*Re: Tweeds Garages Ltd.* [1962] Ch 406).

On a whole, having considered the entire application I was satisfied that petitioner had shown that the respondent company was unable to pay its debt under s. 218(1)(e) of the Companies Act 1965. Despite the latitude given by the petitioner and the request by respondent's Counsel for adjournments to settle the matter out of Court, yet, by the end of the day, so to speak, no settlement was reached. This, in my view, afford cogent evidence that the respondent company was unable to pay its debt. One should also consider that the judgment sum was more than RM2 million.

Hence, based on my reasons stated above, in my judgment, I was satisfied that the respondent was insolvent and it was just equitable that it be wound up. In the result, I made an order in terms of this petition.

Also found at [1989] 2 CLJ 1076

a

b

c

d

e

f

g

h

i